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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/345,092	06/30/1999	JAY S. WALKER	WD2-98-119	9809
22927	7590	08/29/2006		
WALKER DIGITAL 2 HIGH RIDGE PARK STAMFORD, CT 06905			EXAMINER NGUYEN, TRI V	
			ART UNIT	PAPER NUMBER

1751

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/345,092

Applicant(s)

WALKER ET AL.

Examiner

Tri V. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 43, 44, 48, 55-57 and 59 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 12-14, 18, 20-24, 27, 29-32, 34-42, 45-47, 49, 53, 54 and 58 is/are rejected.
- 7) ☒ Claim(s) 3-11, 15-17, 19, 25, 26, 28, 33 and 50-52 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

In the amendment filed on 12 June 2006, Claims 45-60 have been added. The currently pending claims considered below are Claims 1-60.

The amendment filed is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the contents of applications 08/920116, 08/822709, 08/947798 have been incorporated into the specifications.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Priority***

In the amendment filed on 12 June 2006, the priority has been claimed to US application No. 09/164670 filed on October 1, 1998 which issued as US Patent 6,324,520. Accordingly, claims 1-60 are entitled to the benefit of the prior application.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 47 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially equivalent" in claim 47 (line 13) is a relative term which renders the claim indefinite. The term "substantially equivalent" is not defined by the claim, the

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specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear what constitute the range for two amounts to be considered substantially equivalent.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 12, 13, 14, 27, 29, 34, 35 and 60 are rejected under 35 U.S.C. 102(e) as being anticipated by Cameron et al. (US 5,592,378).

Claim 1: Cameron et al. discloses a method for dispensing a product to a customer, comprising:

- a. receiving a product selection from a customer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- b. determining if the product qualifies for an alternate product offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- c. presenting an alternate product offer message to the customer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- d. determining if the customer has accepted the alternate product offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68); and
- e. dispensing a first product that corresponds to said alternate product offer if the customer has so accepted, or, dispensing the first product if the customer has not accepted the offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).

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Claim 2: Cameron et al. discloses a method for dispensing a product as in Claim 1 above, and further discloses determining if the originally selected product has alternative product decision rules (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).

Claims 12-14: Cameron et al. discloses a method for dispensing a product as in Claim 1 above, and further discloses choosing the alternative product based on the available quantities of the originally selected product and the alternate product as stored in an inventory database (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).

Claim 27: Cameron et al. discloses a method for dispensing a product as in Claim 1 above, and further discloses the use of upselling and cross-selling marketing to promote an offer for a plurality of different alternate products (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).

Claim 29: Cameron et al. disclose a method for dispensing a product as in Claim 1 above, and further discloses receiving an amount of money from the customer (col 12, lines 9-39).

Claims 34 and 35 are directed to the apparatus of claim 1; therefore, the prior art of Cameron et al. as set forth above in claim 1 is relied upon to reject claims 34 and 35.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 18, 20-24 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron et al. (US 5,592,378).

Claims 18, 23 and 24: Cameron et al. disclose a method for dispensing a product as in Claim 1 above, but does not explicitly further discloses that the alternate product offer is an incentive to purchase another item (i.e. a substitute product that is not the original product). Cameron et al. discloses the use of coupons and discount in the purchasing process (col 9, lines 40-45 and col 12, lines 10-39). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Cameron et al. with providing a coupon since it was known in the art that offering a discount is used to increase prospective sales.

Claims 20-22: Cameron et al. disclose a method for dispensing a product as in Claim 18 above. While it is not explicitly disclosed that the incentive is a coupon with a coupon code comprising a sequence of characters which includes an expiration date, Cameron et al. does disclose using the expiration date of the product when determining the alternate product offer. Official Notice is taken that it is old and well known to identify coupons with coupon codes consisting of a sequence of characters and that the sequence of characters may include any desired information about the product, such as the UPC code, expiration date of the coupon, identity of the product manufacturer, etc. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a sequence of characters on the coupon. One would have been motivated to include such information on the coupon in order to allow better tracking of the incentive program by the coupon issuer, as is normal within the advertising arts.

Claims 30 and 31: Cameron et al. disclose a method for dispensing a product as in Claim 29 above, and further discloses receiving money from the customer and selecting an alternate product offer. Conlon et al. further discloses the use of upselling in the giving the offer. While it is not explicitly disclosed that the alternate product has a higher value than the originally selected product nor that it is based on the amount of money paid, it would have been obvious to do so. One would have been motivated to select an offer for an alternate product of higher value than the originally selected product and to

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further base the selection on the amount of money received in order to further entice acceptance of the offer by the customer without requiring the customer to insert additional money.

Claim 32: Cameron et al. disclose a method for dispensing a product as in Claim 31 above, but does not explicitly further disclose that the offer is for a discount in the present price of the alternate product. Cameron et al. discloses the use of coupons and discount in the purchasing process (col 9, lines 40-45 and col 12, lines 10-39).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Cameron et al. with providing a discount in the price since it was known in the art that offering a price reduction is used to increase prospective sales.

Claims 36-42, 49 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron et al. in view of Lockwood et al. (US Re. 32, 115).

Claims 36, 40, 49 and 53: Cameron et al. discloses a method for dispensing a product to a customer, comprising:

- a. receiving a product selection from a customer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- b. determining if the product qualifies for an alternate product offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- c. presenting an alternate product offer message to the customer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- d. determining if the customer has accepted the alternate product offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68); and
- e. dispensing a first product that corresponds to said alternate product offer if the customer has so accepted, or, dispensing the first product if the customer has not accepted the offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).

However, Cameron et al. does not explicitly disclose the method being implemented in a vending machine. In an analogous art, Lockwood et al. discloses a computer controlled goods dispensing self-service terminal in which the consumer can purchase a

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product and is offered a choice to purchase the product or alternate products (col 8, lines 30-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Cameron et al. to arrive at a vending machine with cross-/up-selling capabilities. One would have been motivated to modify to implement the method on a vending machine to gain the advantages of ensuring that the sales proposition are available at any time of the day and in numerous and convenient locations.

Claim 37: Cameron et al. discloses a method for dispensing a product as in Claim 36 above, and further discloses determining if the originally selected product has alternative product decision rules (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).

Claims 38-39 and 41-42 are directed to the apparatus of claims 36 and 40 respectively; therefore, the prior art of Cameron et al. and Lockwood et al. as set forth above in claims 36 and 40 are relied upon to reject claims 38-39 and 41-42.

Claims 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron et al. in view of Lockwood et al. and Neidig (US 3,442,422).

Cameron et al. discloses a method for dispensing a product to a customer, comprising:

- a. receiving a product selection from a customer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- b. determining if the product qualifies for an alternate product offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- c. presenting an alternate product offer message to the customer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);
- d. determining if the customer has accepted the alternate product offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68); and
- e. dispensing a first product that corresponds to said alternate product offer if the customer has so accepted, or, dispensing the first product if the customer has not accepted the offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).



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However, Cameron et al. does not explicitly disclose the method being implemented in a vending machine and dispensing beverages and snacks. In an analogous art, Lockwood et al. discloses a computer controlled goods dispensing self-service terminal in which the consumer can purchase a product and is offered a choice to purchase the product or alternate products while Neidig discloses a vending machine serving beverages and snacks (Lockwood et al.: col 8, lines 30-49 and Neidig: col 1, lines 24-45). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Cameron et al. to arrive at a vending machine with cross-/up-selling capabilities and dispensing beverages and snacks. One would have been motivated to modify to implement the method on a vending machine to gain the advantages of ensuring that the sales proposition are available at any time of the day and in numerous and convenient locations.

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron et al. in view of Lockwood et al. and Malaspina (US 5,544,784).

Claim 54: Cameron et al. disclose a method, comprising:  
receiving, by a touch screen of a vending machine, an indication from a customer of an acceptance of an alternate product offer provided by the vending machine (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68); and  
dispensing, by the vending machine and to the customer, an alternate product associated with the alternate product offer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).

However, Cameron et al. does not explicitly disclose the method being implemented in a vending machine with a touch screen as an input device. In an analogous art, Malaspina discloses a vending machine with a touch screen input (col 3, lines 36-57). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Cameron et al. to arrive at a vending machine with cross-/up-selling capabilities and a touch screen input. One would have been motivated to modify to implement the method on a vending machine to gain the advantages of ensuring that the sales proposition are available at any time of the day, in numerous and convenient locations and easily accessible via an input devices.

Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron et al. in view of Saigh, Jr. (US 2,607,463).

Claim 58: Cameron et al. disclose a method, comprising:

receiving, by a vending machine, an indication of a customer selection of a product offered for sale by the vending machine, the product being associated with a first brand (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68); receiving, by the vending machine, an indication of an amount of funds provided by the customer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);

determining, after the receiving of the indication of the customer selection of the product, and by a processor of the vending machine, an alternate product that is associated with a second brand that is different than the first brand (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68);

providing, to the customer and by the vending machine, an offer for the alternate product (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68); determining, by the processing device of the vending machine, an acceptance, by the customer, of the offer for the alternate product (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68); and

dispensing, by the vending machine, and after the determination of the acceptance of the alternate product offer by the customer, the alternate product to the customer (col 14, line 61 to cl 15, line 11; col 17, line 49 to col 18, line 37 and col 20, lines 1-68).

However, Cameron et al. does not explicitly disclose the method being implemented in a vending machine with different brands. In an analogous art, Saigh, Jr. discloses a vending machine stocked with different brands (col 13, lines 5-37). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Cameron et al. to arrive at a vending machine with cross-/up-selling capabilities stocked with differing brands. One would have been motivated to modify to implement the method on a vending machine to gain the advantages of ensuring that the sales proposition are available at any time of the day

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and in numerous and convenient locations. Furthermore, differing brands proposition are well-known in the marketing field such as for promotional campaign of a new brand.

### ***Allowable Subject Matter***

Claims 43, 44, 48, 55-57 and 59 are allowed.

Claims 3-11, 15-17, 19, 25, 26, 28, 33 and 50-52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

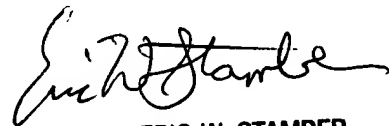
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri V. Nguyen whose telephone number is (571) 272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029 and Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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